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8 Attorneys for Federal Deposit Insurance Corporation as Receiver
 for Defendant IndyMac Federal Bank, FSB

9 UNITED STATES DISTRICT COURT
 10
 11 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

12 EDEN GARDEN LLC, a California limited
 13 liability company; ALI K. AMIDY, an
 14 individual; GUITI NAHAVANDI AMIDY, an
 individual; CENTRA NET INVESTMENT
 LLC, a California limited liability company,

15 Plaintiffs,

16 v.

17 INDYMAC VENTURE, LLC, a Limited
 18 Liability Company; FEDERAL DEPOSIT
 19 INSURANCE CORPORATION, as
 Conservator of IndyMac Federal Bank, FSB,
 and DOES 1-10,

20 Defendants.

No. CV-11-02356-JF

*This matter assigned to Honorable Jeremy
 Fogel, Courtroom No. 3, for All Purposes*

**NOTICE OF MOTION AND MOTION
 OF FEDERAL DEPOSIT INSURANCE
 CORPORATION AS RECEIVER OF
 DEFENDANT INDYMAC FEDERAL
 BANK, FSB TO DISMISS CLAIMS**

[F.R.C.P. Rules 12(b)(6) and 12(b)(1)]

Date: August 5, 2011
 Time: 9:00 a.m.
 Dept: Courtroom No. 3
 Judge: Honorable Jeremy Fogel

Filed Concurrently Herewith:
 1. Memorandum of Points and Authorities;
 2. Declaration of James P. Gazdecki;
 3. Declaration of Jack W. Schwartz, Jr.;
 4. Request for Judicial Notice; and
 5. [Proposed] Order – *Lodged herewith*

25 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE THAT on August 5, 2011, at 9:00 a.m., or as soon thereafter
 27 as may be heard, before the Honorable Jeremy Fogel, presiding, in the United States District
 28 Court for the Northern District of California, San Jose Division, located at 280 South First

1 Street, San Jose, California 95113, Courtroom No. 3, the Federal Deposit Insurance Company as
 2 Receiver of Defendant INDYMAC FEDERAL BANK, FSB (*"FDIC – Receiver"*), erroneously
 3 sued herein as FEDERAL DEPOSIT INSURANCE CORPORATION, as Conservator of
 4 IndyMac Federal Bank, FSB, by and through its undersigned counsel, will and hereby does
 5 move the Court to dismiss the Complaint of Plaintiffs EDEN GARDEN LLC, a California
 6 limited liability company; ALI K. AMIDY, an individual; GUITI NAHAVANDI AMIDY, an
 7 individual; CENTRA NET INVESTMENT LLC, a California limited liability company
 8 (collectively *"Plaintiffs"*) against FDIC – Receiver for failure to state a claim upon which relief
 9 can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6) and lack of subject
 10 matter jurisdiction pursuant to Federal Rule of Civil Procedure Rule 12(b)(1).

11 This motion is based on the following grounds:

12 1. This Court should dismiss the Complaint against the FDIC – Receiver pursuant to
 13 Federal Rule of Civil Procedure Rule 12(b)(6) because Plaintiffs seek equitable remedies against
 14 FDIC – Receiver. Equitable claims against FDIC – Receiver are precluded by 12 U.S.C.
 15 §1821(j) which provides: "Except as provided in this section, no court may take any action,
 16 except at the request of the Board of Directors by regulation or order, to restrain or affect the
 17 exercise of powers or functions of the Corporation as a conservator or a receiver."

18 2. This Court lacks subject matter jurisdiction over Plaintiffs' Complaint against the
 19 FDIC – Receiver pursuant to Federal Rule of Civil Procedure Rule 12(b)(1). Specifically, the
 20 Complaint fails to present a justifiable case or controversy as required by Article III of the
 21 United States Constitution. First, Plaintiff has failed to exhaust the mandatory administrative
 22 claim procedure required of creditors by 12 U.S.C. § 1821(d)(3) – (13) before filing or
 23 continuing litigation against FDIC – Receiver. Second, this Court cannot provide meaningful
 24 relief to Plaintiff due to the worthlessness determinations made by the FDIC Board of Directors.

25 3. Alternatively, this Court should dismiss the Complaint against the FDIC –
 26 Receiver pursuant to Federal Rule of Civil Procedure Rule 12(b)(1) on Prudential Mootness
 27 grounds. Specifically, this Court should not allow Plaintiffs' continued litigation of claims
 28 against the FDIC – Receiver where no recovery is possible because it is an exercise in futility

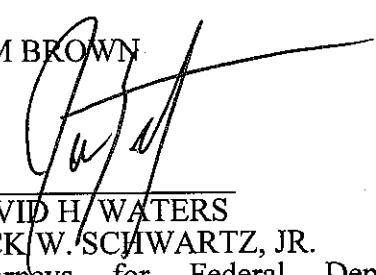
1 and would needlessly consume judicial resources.

2 This Motion is based upon this Notice of Motion and the Memorandum of Points and
3 Authorities, Declaration of James P. Gazdecki, Senior Attorney for the FDIC – Receiver,
4 Declaration of Jack W. Schwartz, Jr. and Request for Judicial Notice, all filed concurrently
5 herewith, the papers, records and file herein and such evidence as may be presented at the
6 hearing on the motion.

7 Dated: June 10, 2011

BURNHAM BROWN

8
9 By:


10 DAVID H. WATERS
11 JACK W. SCHWARTZ, JR.
12 Attorneys for Federal Deposit
13 Insurance Corporation as Receiver
14 for Defendant IndyMac Federal
15 Bank, FSB
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